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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,778	01/15/2007	Roger Hartenburg	1066722	6122
59154	7590	07/08/2009	EXAMINER	
OSLER, HOSKIN & HARCOURT LLP (OTHER)				HARTMANN, GARY S
1000 DE LA GAUCHETIERE STREET WEST				
SUITE 2100				
MONTREAL, QC H3B-4W5				
CANADA				3671
ART UNIT		PAPER NUMBER		
NOTIFICATION DATE			DELIVERY MODE	
07/08/2009			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipmtl@OSLER.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/597,778	HARTENBURG, ROGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary Hartmann	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2009.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 3-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 August 2008 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (U.S. Patent 4,708,516).

Miller discloses a ground covering including a multi-layered structure with a substructure (16), a layer of sand (18) and a superstructure (14) arranged as claimed (Figure 1). Because the substructure is aggregate in the claimed size range, it is within the scope of the term “ballast” and is within the claimed size range. Because the superstructure includes binder, it is naturally bonded to the substructure.

Regarding claim 5, note that even a completely impervious pavement (i.e., zero voids) is within the claimed range.

Claims 1, 5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntosh et al. (U.S. Patent 5,282,691).

McIntosh discloses a water permeable ground covering including a multi-layered structure with a substructure (2) and a superstructure (3) arranged as claimed (Figure 1).

Claims 1, 5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Welty (U.S. Patent 3,690,212).

Welty discloses a water permeable ground covering including a multi-layered structure with a substructure (13) and a superstructure (14) arranged as claimed (Figures 1 and 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, McIntosh et al. or Welty, as applied above.

Regarding the particle sizes and shapes recited in the claims, these sizes are all known to one skilled in the art. Further, information regarding characteristics imparted to ground coverings by specific particle sizes is readily available to one skilled in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the particle sizes as claimed in order to obtain a ground covering having characteristics best suited to a particular application.

Regarding the aggregate material, these are well known aggregates to use in order to obtain a strong, durable covering. For this reason, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the claimed materials.

The binding materials are well known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the binding materials as claimed in order to obtain a durable covering.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the structure thickness in order to suit specific design loads.

Given the structures of Miller, McIntosh or Welty, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the method in order to obtain the finished structure.

#### ***Response to Arguments***

Applicant's arguments filed 12 May 2009 have been considered but are not persuasive. While Miller is designed to minimize permeability, it still has at least some permeability. Because there are no limitations which clearly recite a scope with respect to permeability, little patentable weight can be given thereto. In other words, since Miller is not completely impermeable, it continues to be broadly within the scope of claim recitations. On the other hand, the examiner recognizes this is a technicality; therefore, additional rejections have been made.

Because applicant has not traversed the examiner's assertions regarding what is within ordinary skill as discussed in the 103 rejections in the previous Office action, these are taken as admitted prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 571-272-6989. The examiner can normally be reached on Tuesday through Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary Hartmann/  
Primary Examiner, Art Unit 3671